

Exhibit 305

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4
5 IN RE: BLUE CROSS BLUE SHIELD
6 Master File No. 2:13-CV-20000-RDP
7 ANTITRUST LITIGATION
8 MDL NO. 2406

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11 VIDEO DEPOSITION OF MELISSA ROTUNNO
12 Kirkland & Ellis
13 300 North LaSalle
14 Chicago, Illinois 60654
15 April 12, 2017
16 8:30 a.m.

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21 REPORTED BY: Lane C. Butler
22 Certified Realtime Reporter,
23 Registered Professional
24 Reporter and Notary Public
25

1 A. Yes.

2 Q. Okay. And there is a Blue Cross word
3 mark and a Blue Cross design mark. Is that
4 correct?

5 A. There are multiple Blue Cross design
6 marks and a Blue Cross word mark.

7 Q. Okay. And among those multiple Blue
8 Cross design marks, the first was created and used
9 in 1934; correct?

10 A. Yes.

11 Q. And do you know who the first user of
12 the Blue Cross design mark was?

13 A. Yes.

14 Q. And who was that?

15 A. The Minnesota Plan.

16 Q. Now, do you know when the Blue Cross
17 word mark was first used?

18 A. No.

19 Q. Is that something that would be
20 reflected somewhere in the Association's records?

21 A. Maybe in the federal registration.

22 Q. Okay. Do you know who -- who first
23 used the Blue Cross word mark?

24 A. No.

25 Q. Now, you mentioned the Minnesota

1 Plan. When the Minnesota Plan first used the Blue
2 Cross design mark, did it own common-law trademark
3 rights or service mark rights in that use?

4 MR. HOLMSTEAD: Objection to the
5 extent it calls for a legal conclusion.

6 But you can answer.

7 A. Well, trademark rights accrue upon
8 use, so when it first used, it would have acquired
9 common-law trademark rights.

10 Q. Okay. And is it your understanding
11 that those rights were intrastate in Minnesota?

12 MR. HOLMSTEAD: Objection, vague to
13 the extent it calls for a legal conclusion.

14 You can answer.

15 A. What -- I -- I don't understand your
16 question.

17 Q. Did -- is it your understanding that
18 the Minnesota Plan operated in other states or did
19 it just operate in Minnesota?

20 A. Oh, no.

21 MR. HOLMSTEAD: Objection, scope.
22 To the extent you know, you can
23 answer.

24 A. It's my understanding it only
25 operated in Minnesota.

1 A. Yes.

2 Q. And would you agree that the words
3 "quality control" do not appear together in this
4 agreement?

5 A. Yes.

6 Q. Okay. And would you agree that the
7 Plans, the Blue Shield Plans that were using the
8 Blue Shield marks prior to December 1st, 1952, did
9 not require permission from the national
10 organization to continue that use?

11 MR. HOLMSTEAD: Objection to the
12 extent it calls for a legal conclusion.

13 A. I don't understand the question.

14 Q. Okay. Let's be more specific.
15 Buffalo Plan started use of Blue Shield in 1939;
16 correct?

17 A. Yes.

18 Q. Continued that use from 1939 to 1952;
19 correct?

20 A. Yes.

21 Q. The Buffalo Plan did not require
22 permission to continue its thirteen years of use of
23 Blue Shield marks in 1952; correct?

24 MR. HOLMSTEAD: Objection to the
25 extent it calls for a legal conclusion.

1 A. I think the answer is, correct. The
2 Buffalo Plan established rights in Buffalo.

3 Q. Okay.

4 A. And ultimately assigned them to the
5 national organization.

6 Q. When you say "ultimately assigned
7 them to the national organization," when did that
8 assignment take place?

9 A. Well, for sure in 1951 when they
10 signed this agreement, or '52. Whenever this was
11 signed. '52.

12 Q. Okay. And when you say "for sure,"
13 what leads you to say that for sure?

14 A. I'm looking at a writing that's
15 signed.

16 Q. Okay. A writing that's signed that
17 contains no reference to assignment; correct?

18 MR. HOLMSTEAD: Object to the form.

19 A. I disagree with your
20 characterization.

21 Q. It's not a characterization, it's a
22 fact. You just testified to it's a fact.

23 MR. HOLMSTEAD: Counselor --

24 A. I said the word did not include
25 "assignment," but I described how an assignment